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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH – CENTRAL DIVISION

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HAROLD MARK TORBETT (A.K.A.  
MARK TORBETT) and REGINA  
TORBETT,

Plaintiffs,

vs.

THE CITY OF OGDEN, OGDEN CITY  
POLICE DEPARTMENT, CODY MARSH,  
Z. MARTIN, T. WILLIAMS,

Defendants.

**MOTION TO CONTINUE THE FINAL  
PRETRIAL CONFERENCE SCHEDULED  
FOR MARCH 23, 2018 AT 10:00 a.m.**

Case No. 1:16-cv-00044-BSJ

Judge: Bruce S. Jenkins

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COME NOW Defendants, The City of Ogden, Ogden City Police Department, Cody Marsh, Z. Martin and T. Williams by and through their attorneys, Stephen F. Noel and Thomas Walker Farrell of Smith Knowles, P.C. and hereby moves this Honorable Court for a modification of the current scheduling order and continuance of the currently scheduled pretrial conference pursuant to Rule 16 of the Federal Rules of Civil Procedures as follows:

1. The current schedule includes submission of a proposed and hopefully stipulated pre-trial order on Wednesday, March 21, and a pre-trial conference set for Friday, March 23.

2. Today, Plaintiffs' counsel contacted the undersigned explaining that he had been out of town for many days and away from the office on a personal matter.

2. Plaintiffs' counsel and the undersigned discussed his situation and determined that they would try to make best efforts to have a proposed scheduling order provided to the Court by Wednesday, March 21, 2018.

3. The concern, however, upon further contemplation, is that there will not be enough time to allow the attorneys to come together and to discuss in any meaningful way the different issues, facts, witnesses and documents that would be the subject of an appropriate pretrial order. The undersigned attempted to confirm with Plaintiffs' Counsel, but it is believed that Plaintiff's Counsel was traveling back to Utah at the time.

4. Because of many scheduling issues in this case, including the fact that the Plaintiffs live out of state, the schedule in this matter has been amended multiple times.

5. The Court has been very patient in working with the parties and allowing the scheduling order to be amended.

6. At one point, parties agreed that there would be an extension of the deadline only for "Defendants' injury/damage reports" and any reports Plaintiffs desired to provide in rebuttal to those reports. (Doc. 32 ¶ 4 (c) and (d)). Accordingly, on April 18, 2017, the Court entered its

Amended Scheduling Order with the foregoing limitation on the expert reports (Doc. 32, ¶ 4(c) and (d)).

7. Because of certain continuing issues scheduling the Plaintiffs' depositions, the parties, on August 31, 2017, again jointly moved the Court for another brief extension of fact discovery and of the expert disclosure and report deadline. But again, only for the Defendants Injury/Damage Reports and any Plaintiff rebuttal reports (Doc. 33, ¶ 2).

8. The Court granted the motion, but in doing so the order failed to recognize the distinction between the filing of Defendants' expert reports on damages, and then any rebuttal reports by the Plaintiffs'.

9. Accordingly, the parties jointly moved this Court for a corrected Amended Scheduling Order in order to address the problem with the timing of expert reports. The Court entered that corrected Amended Scheduling Order on November 20, 2017 (Doc. 37).

10. Accordingly, expert discovery was to be concluded by February 16, 2018, but it kept a pretrial conference date of March 23, 2018. (Doc. 37, ¶ 4).

11. Once all experts had been disclosed on January 2, 2018, the parties made efforts to schedule the deposition of the Plaintiffs' expert, but the Plaintiffs' expert's schedule would not allow for the deposition until after the close of expert discovery. Accordingly, Plaintiffs' expert was deposed on Friday, March 16, 2018, just a few days ago. This was the first date that the parties' and Plaintiffs' expert's schedule could be coordinated.<sup>1</sup>

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<sup>1</sup> Important information relevant to the Defense was learned in that deposition and an expedited transcript was requested and received today.

12. Now that the deposition of the Plaintiffs' expert has been concluded, the Defendants have finalized their motion for summary judgment and have filed it concurrently with this motion to continue the pretrial conference. Defendants' motion for summary judgment was contingent upon the completion of expert discovery, as the deposition of Plaintiffs' expert witness provided valuable information concerning Plaintiffs' claims. Although it was filed within 30 days from the close of all discovery as per Rule 56(b), the current pre-trial conference is scheduled for just a few days later.

13. In adopting the Corrected Amended Scheduling Order, the parties overlooked that the time set for the final pretrial conference failed to account for the new expert discovery deadline, which has been made even more difficult because the expert could not be deposed until just days ago and would not accommodate any motions that would be filed at the close of expert discovery

14. Accordingly, in an effort to achieve the maximum benefit of the pretrial conference and to allow time for the adjudication of Defendants' motion for summary judgment and motions in limine, the undersigned hereby respectfully requests that the Court continue the pretrial conference scheduled for Friday, March 23, 2018 to a date sufficient to allow for adjudication of the Defendants' motions, and that the Court adjudicate those motions prior to any pre-trial conference.

15. Currently, there is no trial scheduled in this matter, and therefore no continuance of a trial will be necessary. Moreover, this continuance will allow for the adjudication of certain

issues which may resolve all or some of the case, thereby precluding the need for a trial, or greatly narrowing the issues to be tried.

DATED this 19<sup>th</sup> day of March, 2018.

SMITH KNOWLES, P.C.

/s/ Stephen F. Noel  
Stephen F. Noel  
Thomas W. Farrell  
*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of March, 2018, a true and correct copy of the foregoing document was sent via email to the following:

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/s/ Shannon Strausbaugh  
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